"Exploring the link between Peace and Justice- The need for a critical balance in the pursuit for accountability"

A Paper Presented by Mr. Michael Otim-Head of Uganda Office International Centre for Transitional Justice (ICTJ) at a Regional Forum on International and Transitional Justice organized by Avocats Sans Frontières-Uganda Mission and the Uganda Coalition of the International Criminal Court on 31st July, 2012 at Imperial Botanical Beach Hotel, Entebbe

A larger part of my work experience with civil society in northern Uganda involved the search for peace as well as balancing the need for justice for victims of the conflict in northern Uganda. The establishment of the International Criminal Court (ICC) has been hailed by many as an important step in addressing impunity and holding individuals accountable for serious crimes. Proponents of international justice believe that by holding individuals accountable, the International Courts can contribute to creating peace hence the justification for the establishment of the ICC.¹

Today international criminal courts operate in complex environments characterized on-going armed conflicts where suspects of international crimes may also be the same persons who might be involved in peace negotiations. The ICC intervention in Uganda brought to light some dilemmas of pursuing justice during on-going conflict. In some instances conflict resolution practitioners have often strongly argued against issuing international arrest warrants against members of certain groups involved in negotiations on grounds that it might deter willingness to commit to a peaceful settlement and complicates the negotiation process. In such situations, the parties involved might even demand immunity from prosecutions as a pre-condition for concluding peace agreements. This was the case during the Lome Peace negotiations aimed at ending the conflict in Sierra Leone where the RUF demanded for an amnesty as well as during the Juba negotiations between the Lords Resistance Army and the Ugandan Government (GoU) aimed at ending the conflict in northern Uganda. However its equally important to note that at times suspects of international crimes have used arrest warrants issued against them to scale up violence and this complicates efforts in executing warrants of arrest for such people.

Legally Prosecutors of the International Courts do not engage in political settlements and their job is to investigate and prosecute alleged perpetrators. While the pursuit of justice during on-going conflict may be challenging, the

¹ Statute of the International Criminal Court (Preamble)
immediate effect of issuing an arrest warrant for suspects of international crimes is that it will isolate the suspects from being parties of a future political order based on a firm foundation for respect of the rule of law and sustainable peace.

The case of the northern Uganda offers an example where attempts to balance the two concepts of peace and justice were at interplay. For close to two decades, northern Uganda suffered the greatest burden of armed conflict with various insurgent groups attempting to remove the NRM government from power but the most notable conflict has been the one involving the rebels of the Lords Resistance Army. During the conflict, grave human rights violations were committed against the civilian population.

LRA atrocities have been widely documented and involved cutting of lips, mutilations, killings and abductions of mainly children and young girls who are often turned into “sex slaves” for rebel commanders. As a result of the conflict close to 2 million people were displaced from their homes in northern Uganda and moved to IDP camps between 1996-2006. It is estimated that over 30,000 children could have been abducted by the LRA alone.

Previous attempts at reaching a peaceful settlement of the conflict through dialogue failed on a number of occasions; first in 1994 and later 2004 under Betty Bigombe but her efforts did not achieve lasting peace. In July 2006 a new round of negotiations between the Government of Uganda and the LRA started in Juba, Southern Sudan mediated by the Government of South Sudan under Dr. Riek Machar.

The continued violence in northern Uganda put enormous pressure on GoU to seek ways of ending the unfolding humanitarian catastrophe orchestrated by on-going violence. The government adopted a twofold but sometimes contradictory approach involving the use of military means and a combination of peace talks and an offer for blanket amnesty for the rebels.

Having failed to end the LRA problem militarily, the GoU referred the LRA problem to the International Criminal Court (ICC) in December 2003. When the ICC began collecting information, it was apparent that there existed a reasonable basis to believe that crimes had been committed within the jurisdiction of the ICC and that crimes by the LRA were more serious than those committed by other parties. The ICC thought they had found a perfect case for its first war crimes trials and commenced investigations in Uganda. It’s important to note that when carrying out an investigation, the ICC Prosecutor maintains independence and impartiality.

In May 2005, the ICC Prosecutor made an application to the Court for arrest warrants to be issued against 5 Leaders of the LRA but requested them to be sealed
owing to security related concerns. Having assessed the situation and with improved security in northern Uganda in the second half of that year, the Prosecutor requested for unsealing of the indictments against the leaders of the LRA including its leader Joseph Kony in October 2005.

So far only 3 of those indicted are still surviving and continue evading arrest in the jungles of Democratic Republic of Congo (DRC) and Central African Republic (CAR). However the ICC intervention in Uganda, was greeted by stiff opposition on grounds that it would make a peace deal impossible with the rebels at a future date.

It is worth recalling that in the mid 1990’s, Religious, Traditional and Community leaders from northern Uganda had been trying to facilitate talks between the LRA leadership and the GoU. While these efforts were underway, the announcements by the ICC came as unpleasant surprise to the local leaders. While some people were eager to see the ICC move with its first cases, Local leaders in Uganda were incensed by this move. Observers to these developments argue that the push for the ICC to have its first case conflicted with the views of the local population in northern Uganda. Others meanwhile saw the ICC as lacking legitimacy since people had not heard about it when the government ratified the Rome Statue and there was a feeling that the ICC was some kind of “western style justice’ and should not trample over local traditional mechanisms of conflict resolution.

Others also argued that the ICC intervention would jeopardize prospects for peace and worsen the security situation. Their arguments were straightforward. Why would the rebels negotiate a peace deal when they would be arrested and sent for trial once they returned to Uganda?

Recalling that in the year 2000 at the initiative of Religious, Traditional and Civil society groups in Uganda, a blanket amnesty was passed into law by Parliament of Uganda for all members of rebel groups who returned and denounced rebellion. As a result, even known perpetrators escaped justice and never accounted for any crimes committed during the conflict.

Another complicating factor for the ICC was that it was not seen as impartial because Uganda’s referral to the ICC was made at a joint press conference between the ICC Prosecutor and Uganda’s President Museveni while in London and this also gave rise to perceptions that the ICC was siding with the government and that the ICC had not opened an investigation for atrocities committed by the Ugandan army. The ICC’s decision not to indict government officials is viewed critically by the local leaders. But according to the ICC, the government was investigated but there was insufficient evidence to warrant an indictment. This action has proved difficult for the ICC to undo in subsequent years.
It is also worth pointing out that even though local leaders were critical of the ICC’s handling of the process in Uganda, they did not say that the individuals indicted were wrongly accused of war crimes and crimes against humanity.

The Juba Peace negotiations from July 2006 to April 2008 in Juba South Sudan were the most significant negotiations ever held with the LRA. The pending arrest warrants for the LRA leaders by the ICC gave the talks a special focus because the peace talks were being held under the scrutiny of an International Criminal Court.

The two and half years of peace negotiations between the LRA and GoU were fraught with several challenges because there were considerable differences of opinion between the negotiating parties. The LRA repeatedly demanded that the ICC arrest warrants be eliminated as part of the negotiations something that was not legally possible. The Government on its part viewed the talks as an opportunity to provide the LRA a “soft landing”. The GoU promised that once the LRA signed the Final Peace Agreement (FPA) then they would seek to approach the UN Security Council for a deferral. The LRA warned that if the indictments were pursued, then violence would ensue. By using the ICC indictments as an excuse not to sign the Final Peace Agreement (FPA), the LRA was able to garner popular support against the ICC since most people at the time were tired of the violence.

Despite the criticism against the ICC, observers do acknowledge some positive outcomes by the ICC intervention; for instance the indictments placed the accountability agenda at the very heart of the Juba talks and as a result, on 29 June 2007 the GoU and the LRA finally signed an agreement on principles of accountability and reconciliation. It was one of the most challenging agreements to reach since at the center of the discussions was the peace versus justice debate. The parties later adjourned during the talks to consult further with the people in Uganda to explore potentials for credible alternative justice systems consistent with international standards in addressing impunity.

The country wide consultations by the parties (LRA and GoU) allowed for dialogue on accountability including further examination on the role of the ICC, national justice mechanisms and traditional justice processes. The results indicated that most Ugandan’s at the time favored a national process over the ICC process. An outcome of these discussions can be found in the annexure to agenda item on accountability and reconciliation i.e pursuing national processes for justice outside of the ICC but in conformity with the Rome statute including establishment of Special Court to try those accused of war crimes and crimes against humanity.

When the talks were drawing to a close five agenda items were concluded and the signing ceremony for the FPA was set for 10 April 2009. However the LRA leader Joseph Kony failed to show up to append his signature to the peace agreement.
Later it was revealed that the LRA leader wanted the ICC arrest warrants removed in addition to assurances on his personal security and welfare. Following this disappointment majority of the affected communities were of the view that since the agreement was a result of national consultations, its recommendations ought to be respected and implemented even if the LRA did not honor their part during the talks. Some leaders have also cautioned against removing the ICC indictments at this stage if the LRA do not sign the FPA and demobilize as provided for in the agreements.

Debate will continue for some time as to whether the ICC arrest warrants is solely to blame for the collapse of the peace negotiations. It’s a complex matter which may be impossible to be empirical. There is no doubt that international justice posed a risk during the negotiations. The LRA certainly sought to use the talks to rid themselves from the ICC problem and considered the talks useful for that purpose. There were multiple factors at play during the Juba talks. Rather than seen as spoiler for the talks, the ICC appears to have instead created the momentum for the talks in that the LRA were compelled to demonstrate more seriousness during the negotiations.

The pressure from the ICC arrest warrants were carefully utilized during the negotiations and this impacted on how agenda item number 3 on accountability and reconciliation was shaped. It was made known to the LRA that there was no way the agreements would be accepted internationally without accountability provisions.

Fearing arrest, senior LRA leaders could not come to the negotiating table in person and instead preferred to use proxy’s mostly comprising diaspora people who often pushed their own personal agenda’s rather than those of the LRA leadership at the talks. These diaspora individuals were often people who did not have a clear understanding of the underlying grievances that perpetuated the conflict in northern Uganda. Most of them had little in common with the LRA leadership other than hatred for government led by President Museveni.

The LRA leaders often expressed preference for softer options of justice including the use traditional restorative justice to foster reconciliation with affected communities. As the talks progressed the negotiators agreed to use Uganda's Criminal Justice system and to establish a Special Division of the High Court now renamed the International Crimes Division as an alternative to the ICC. Unfortunately this was still not acceptable to the LRA leadership. When Kony realized that his expectations on personal security and international justice arrangements were not forth coming he stopped engaging in the talks in a meaningful way. He remained distant and elusive giving an impression of a lack of interest in the negotiations.
In October 2007 Kony undertook an internal purge among LRA ranks and killed his second in command Vincent Otti who was widely seen as supportive of the talks. This action cast serious doubts as to whether Kony was really interested in talks. He later reestablished himself as the undisputed leader of the LRA and continued giving orders for fresh abductions, raids and killings across DRC and South Sudan.

On 14 December 2008, the regional armies of Uganda, Southern Sudan and DRC launched a military campaign to neutralize the LRA leadership code named "operation lightening thunder" which is still on-going to date under a new AU force.

It is evident that those who pushed for the talks had noble intentions but had not given due attention as to the LRA’s real intentions /motivation to enter the talks and as a result; their chances of achieving lasting peace were quite slim. Never the less, the GoU has move forward with the implementation of the agreement on accountability and reconciliation in Uganda even though the pace of implementation has been relatively slow; for instance It established the Justice Working group of the Justice Law and Order Sector to implement transitional justice in Uganda. An International Crimes Division of the High Court of Uganda was set up in August 2008 and has 4 Judges appointed to it. Parliament of Uganda also passed into law the ICC Act in March 2010 to provide for the legal regime to try serious crimes in Uganda.

In conclusion, Uganda is one of the countries that attempted to pursue a fully fledged peace process under the scrutiny of the ICC and its supporters. There is no doubt that the ICC arrest warrants complicated the negotiations but the talks did not prove impossible and proceeded in some way. This could challenge the perception that the ICC itself is an obstacle to peace. While a number of peace efforts had been pursued in the past, most of them produced shortlived results and did not resolve the conflict. On the contrary, it appears that rather than exacerbate the conflict, the ICC seemed to have created some momentum for the need to end the violence. Even when the arrest warrants were unsealed in October 2005, another protracted peace process began in Juba two years later which challenges the perception that international justice impairs peace. It compelled the LRA for the first time consider the talks more seriously.

The tensions between peace vs justice are real and debates have matured overtime in that its generally agreed that both concepts can actually work hand in hand for durable solutions. What is clear is that the ICC involvement in Uganda only gave the debate renewed attention and what we have learnt is that its important for the ICC to improve communication with affected communities as early as possible during an investigations and indictment process through a robust outreach strategy.